IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Rajendra Tater v. State of Raj. & Anr.

S.B.CIVIL WRIT PETITION NO.2741/2002
under Article 226 of the Constitution of India.

Date of Order : 4th March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.R.Singhvi, for the petitioner.
Mr. Rameshwar Dave, Dy.Govt.Advocate.

BY THE COURT :

The petitioner entered in the services of Government of Rajasthan being appointed as Lecturer in the subject of Health Education and Family Planning on temporary basis under an order dated 24.4.1978. The appointment though was given for a period of six months but he was allowed to continue in service till his substantive appointment was made by an order dated 28.12.1990. The petitioner was made substantive on the post of Lecturer under proviso (4) to Rule 7 of the Rajasthan Medical Service (Collegiate Branch) Rules, 1962 (hereinafter referred to as “the Rules of 1962”).

The service condition of the petitioner are governed by the Rules of 1962. As per the

schedule appended to the Rules of 1962 the post of lecturer in Health Education and Family Planning is shown at Sr.No.7. As per the scheme of the Rules and the schedule appended thereto there is no further avenue of promotion for the post of lecturer in Health Education and Family Planning.

The grievance of the petitioner is that a person appointed on the post of lecturer in the subject of Health Education and Family Planning is required to remain stagnated uptil retirement as no promotional avenue is provided under the Rules of 1962. The petitioner, therefore, by this writ petition has sought a direction for the respondents to provide reasonable avenues for promotion in respect to the post of lecturer in Health Education and Family Planning.

A reply to the writ petition has been filed on behalf of the respondents admitting the position that no promotional avenue is prescribed under the Rules of 1962 for the lecturers in the subject of Health Education and Family Planning. It is contended by the counsel for the State that the petitioner joined services with open eyes and he was aware of the fact that there was no avenue of promotion even though he has chosen to join the services, therefore, he should be estopped from claiming the relief as prayed.

I have heard counsel for the parties.

The objection raised by the counsel for the respondents to the effect that the petitioner joined service knowing it well that no promotion avenue is available under the Rules is totally contrary to the concepts required to have in a democratic welfare state. It is true that the petitioner joined the services with open eyes and he may be aware of the fact that no avenue of promotion is provided under the relevant Rules but on this count he cannot be estopped to raise his grievance as espoused in present writ petition. Hon'ble Supreme Court while dealing with a similar objection in similar circumstances in the case of State of Tripura & Ors. v. K.K.Roy, (2004)9 SCC 65, held as under:-

> "It is not a case where there existed an avenue for promotion. It is also not a case where the State intended to make amendments in the promotional policy. The appellant being a State within the meaning of Article 12 of the Constitution should have created promotional avenues for the respondent having regard to its constitutional obligations adumbrated in Articles 14 and 16 of the Constitution of India. Despite its constitutional obligations, the State cannot take a stand that as the respondent herein accepted the terms and conditions of the offer of appointment knowing fully well that there was no avenue for promotion, he cannot resile therefrom. It is not a case where the principles of estoppel or waiver should be applied having regard to the constitutional functions of the State."

On merits of the matter there is no dispute that the promotional avenues in services are necessary not only to remove stagnation in services but also to promote dignity, status,

efficiency and interest in services of the employee. An employee must be given an opportunity to advance and develop himself. Hon'ble Supreme Court in the case of Raghunath Prasad Singh v. Secretary, Home (Police) Department, Government of Bihar and others, reported in AIR 1988 SC 1033, while emphasizing the need of promotional avenues held as under:-

> "Before we part with the appeal, we would like to take notice of another aspect. In course of hearing of the appeal, to a query made by us, learned counsel for the appellant indicated the reason as to why the appellant was anxious to switch over to the general cadre. He relied upon two or three communications which are a part of the record where it has been indicated that there is no promotional opportunity available in the wireless organisation. Reasonable promotional opportunities should be available in every wing of public service. That generates efficiency in service and fosters the appropriate attitude to grow for achieving excellence in service. In the absence of promotional prospects, the service is bound to degenerate and stagnation kills the desire to serve properly. We would, therefore, direct the State of Bihar to provide at least two promotional opportunities to the officers of the State Police in the wireless organisation within six months from today by appropriate amendments of Rules."

Hon'ble Apex Court in the case of Council of Scientific & Industrial Research v. K.G.S.Bhatt, reported in 1989(4) SCC 635, emphasized the need of promotional avenues in a service career of an employee. Hon'ble Supreme Court in the case of Council of Scientific & Industrial Research (supra) while emphasizing need of promotional avenues observed as under:-

> "It is often said and indeed, adroitly, an organization public or private does not "hire a hand" but engages or employs a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organization. It is an incentive for personnel development as well. (See principles of Personnel Management, Flipo, Edwin B., 4th Edn., p.246.P) Every management must provide realistic opportunities for promising employees to move upward. "The organization that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both non-managerial employees and their supervisors." (See Personnel Management, Dr. Udai Pareek, p.277). There cannot be any modern management much less any career planning, manpower development, management development etc. which is not related to a system of promotions."

Hon'ble Supreme Court reiterated the law laid down in the case of Council of Scientific and Industrial Research v. K.G.S.Bhatt (supra) in the case of State of Tripura v. K.K.Roy (supra).

In view of legal position narrated above, I am of the considered opinion that promotional avenues or time bound senior/selection grades of pay scale in lieu of promotion should be granted to the lecturers in the subject of Health Education and Family Planning.

The writ petition preferred by the petitioner, therefore, succeeds and is allowed. A

direction is hereby given to the respondent State Government to ensure the grant of either adequate promotional avenue or at least two higher grades in lieu of promotion to the Lecturers in the subject of Heath Education and Family Planning within a period of six months from today.

No order as to cost.

(GOVIND MATHUR),J.

kkm/ps.